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8
9 BEFORE THE
BOARD OF ACCOUNTANCY
10 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

11 In the Matter of the Accusation Against:) No. AC-98-29
12)
13 HAMILTON MOODY) STIPULATION IN SETTLEMENT
2801 Camino Del Rio So.) AND DECISION
14 Suite 300-H)
San Diego, CA 92108-3850)
15 CPA License No. 1890)
Respondent.)

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18 In the interest of a prompt and speedy settlement of this matter, consistent with
19 the public interest and the responsibility of the Board of Accountancy, State of
20 California ("Board"), the parties submit this Stipulation in Settlement and Decision to
21 the Board for its approval and adoption as the final disposition of the Accusation.

22 The parties stipulate that the following is true:

23 1. An Accusation is currently pending against Hamilton Moody
24 ("respondent"), before the Board. The Accusation, together with all other statutory
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1 required documents, was duly served on the Respondent. Respondent filed a timely
2 Notice of Defense (contesting the Accusation).

3 2. At all times herein, Respondent has been licensed by the Board of
4 Accountancy under License No. CPA 1890.

5 3. Respondent has retained Guenter S. Cohn, Esquire, as his attorney of
6 record in this matter, and Mr. Cohn has fully advised him of the nature of the charges
7 alleged in the Accusation and the content and effect of this Stipulation and of the
8 Decision and Order. Respondent understands the charges and allegations of violations
9 of the Business and Professions Code alleged in the Accusation and his rights under
10 the Administrative Procedure Act and the consequences of entering into this
11 Stipulation. After said consultation, Respondent has decided to bind himself to the
12 terms and conditions of this Stipulation.
13

14 WAIVER OF RIGHTS

15 4. Respondent has read and understands the charges and violations alleged
16 in the Accusation, No. AC-98-29.
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18 5. Respondent gives up, relinquishes and waives the right to a hearing, the
19 right to subpoena witnesses and documents on his behalf, the right to cross-examine
20 witnesses, the right to present evidence in his defense, the right to introduce evidence
21 in mitigation, the right to reconsideration and the right to appeal any adverse decision
22 or order, which might be rendered by the Board following an administrative hearing
23 held pursuant to the provisions of the Administrative Procedure Act of the State of
24 California.
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1 6. Respondent understands that as a direct consequence of entering into
2 this Stipulation, the Board will revoke his license to practice accountancy in California.

3 7. It is understood by respondent and his attorney that, in deciding whether
4 to adopt this Stipulation, the Board may receive oral and written communications from
5 its staff and the Attorney General's office. Communications pursuant to this paragraph
6 shall not disqualify the Board or other persons from future participation in this or any
7 other matter affecting Respondent. In the event this settlement is not adopted by the
8 Board, the Stipulation will not become effective and may not be used for any purpose
9 whatsoever, except for this paragraph, which shall remain in effect.
10

11 8. On or about April 20, 1998, Respondent had sent a letter of resignation to
12 the Board which was not accepted.

13 9. For purposes of this proceeding, any future proceedings before the
14 parties and any other actions taken by or before any governmental agency responsible
15 for licensing. Notwithstanding this agreement, this Stipulation may not be used as
16 evidence in any civil or criminal proceedings. Respondent admits the following:
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18 **BASIS FOR DISCIPLINE**

19 10. Respondent admits that he has subjected his accountancy license (CPA
20 License No. 1890) to disciplinary action pursuant to Business and Professions Code
21 sections 490 and 5100(a),(h), (l) and (j), unprofessional conduct, as follows:
22

23 **COUNT I**

24 Respondent has subjected his license to discipline under Code section 5100(a)
25 on the grounds of unprofessional conduct in that on or about January 26, 1998, he was
26 convicted upon his guilty plea to violating Penal Code section 487(a), felony, grand
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1 theft, in the matter entitled *People of the State of California v. Hamilton Moody*,
2 Municipal Court of California, County of San Diego Judicial District, Case No. CD
3 132149.

4 The circumstances surrounding respondent's conviction are substantially related
5 to the qualifications, functions and duties of a certified public accountant because it
6 evidences a present and potential unfitness to perform the functions authorized by his
7 certified public accountant license in a manner consistent with the public health, safety
8 or welfare.

9
10 The following facts establish the substantial relationship between Respondent's
11 unprofessional conduct and the practice of a certified public accountant:

12 Respondent and his business, Perpetual Commodity Fund, Inc., were entrusted
13 to manage property for a group of investors. Respondent sold the property without the
14 knowledge of the partner/investors and converted approximately \$ 540,000.00 to his
15 own personal use.

16
17 Respondent unlawfully used the proceeds from the sale of the investment property
18 owned by the partnership which consisted of several individuals and Respondent.

19 The investment property was acquired in approximately 1966 and Respondent
20 was given management responsibility for the property. In 1989, the partnership agreed
21 to sell the property in exchange for monthly interest-only payments with the balance
22 due in 1994. In approximately May of 1993, the buyer paid off the note.

23
24 At the completion of the pay off, Respondent received escrow proceeds of
25 approximately \$ 545,511.20. Respondent did not inform the investment partners of the
26 completed sale or of his receipt of the proceeds. Instead, he falsified an extension of
27

1 the original note, with a higher interest rate, and initiated an interest-only stream of
2 payment to the partners to avoid detection. When the stream of payments ended in
3 1995, respondent informed the other investors that the buyer had defaulted and he
4 would begin foreclosure proceedings.

5 COUNT II

6 Respondent has subjected his license to discipline under Code section 490 in
7 that on February 9, 1998, he was sentenced for a crime substantially related to the
8 qualifications, functions or duties of a certified public accountant or public accountant.
9

10 COUNT III

11 During the period June 26, 1991, through July 14, 1992, while trustee for the
12 Slaughter Family Trust, the Respondent made unexplained withdrawals from the Trust
13 totaling \$ 245,650.00. The checks were written directly to Respondent, his firm "Moody
14 and Bucher, An Accountancy Corporation" and to an entity owned by Respondent,
15 "San Diego One Touch Sales." The unauthorized withdrawals were used for
16 Respondent's personal use. Respondent violated Business and Professions Code
17 sections 5100 (h), (i) and (j).
18

19 DISCIPLINARY ORDER

20 IT IS HEREBY ORDERED that License No. CPA 1890 issued to Hamilton
21 Moody, is revoked.
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23 1. Cost Recovery.

24 Should Respondent reapply for his CPA license he shall pay to the Board costs
25 associated with its investigation and enforcement pursuant to Business and
26 Professions Code section 5107 in the amount of \$ 7,761.46.
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2. Restitution

Respondent shall make restitution to the Slaughter Family Trust. The outstanding balance will be negotiated between the Slaughter Family Trust and Respondent.

I concur in the Stipulation and Order.

Dated: 11-13-98

DANIEL E. LUNGREN, Attorney General
of the State of California

By: 
JOEL S. PRIMES, Supervising
Deputy Attorney General

Attorneys for Complainant

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ACKNOWLEDGMENT

I hereby state that I have read and that I understand this document. I understand that I have certain rights under the California Administrative Procedure Act and the laws and regulations of the State of California in regard to this matter, and I knowingly and intelligently waive those rights.

My attorney has fully explained to me the legal significance and consequence of this Stipulation, and I fully understand all of, and agree to be bound by, the terms of this document.

I further understand that this Stipulation may not be accepted by the Board of Accountancy, in which case it is of no effect.

I also understand that once I sign this Stipulation, I shall not be permitted to withdraw from it unless it is rejected by the Board of Accountancy.

I agree that a signed facsimile (FAX) of this document shall be as binding as an original signed copy.

Dated: 11/5/98

Hamilton Moody
HAMILTON MOODY
CPA License No. 1890
Respondent.

1 Approved as to Form:

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3 Dated: 11-5-98

4 LAW OFFICES OF GUENTER S. COHN

6
7 By: 

8 GUENTER S. COHN

9 Attorney at Law

10 Attorney for Respondent

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DECISION AND ORDER
OF THE BOARD OF ACCOUNTANCY

The foregoing Stipulation and Order in case number AC-98-29, is hereby adopted as the Order of the California Board of Accountancy, Department of Consumer Affairs, State of California. An effective date of January 8, 1999, has been assigned to this Decision and Order.

Made this 9 day of December, 1998.

A. E. Miller
Board of Accountancy
Department of Consumer Affairs
State of California

1 DANIEL E. LUNGREN, Attorney General
of the State of California
2 JOEL S. PRIMES, (State Bar No. 42568)
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7 BEFORE THE
BOARD OF ACCOUNTANCY
8 DEPARTMENT OF CONSUMER AFFAIRS
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10 In the Matter of the Accusation Against:)

No. AC-98-29

11 HAMILTON MOODY)
2801 Camino Del Rio South)
12 Suite 300 H)
San Diego, CA 92108-3850)
13 CPA License Number 1890)

ACCUSATION

14 Respondent.
15

16 Carol Sigmann, for causes for discipline, alleges:

17 1. Complainant Carol Sigmann makes and files this accusation in her official
18 capacity as Executive Officer, Board of Accountancy, Department of Consumer Affairs, State of
19 California (hereinafter "Board").

20 2. On December 6, 1945, the Board issued Certified Public Accountant
21 License Number 1890 to Hamilton Moody (hereinafter "respondent"). The certificate has
22 expired and been renewed during periods listed in the license history. The certificate was in
23 force and effect at all times listed herein. On August 31, 1998, the certificate expired.

24 3. Business and Professions Code (hereinafter "Code") section 5100
25 provides, in part, that the Board may revoke, suspend or refuse to renew any permit or certificate
26 issued by the Board for unprofessional conduct which includes, but is not limited to:

27 "(a) Conviction of any crime substantially related to the qualifications,
28 functions and duties of a certified public accountant or a public accountant."

1 “(c) Dishonesty, fraud, or gross negligence in the practice of public
2 accountancy or in the performance of the bookkeeping operations described in Section 5052.”

3 “(h) Fiscal dishonesty or breach of fiduciary responsibility of any kind.”

4 “(i) Knowing preparation, publication or dissemination of false, fraudulent, or
5 materially misleading financial statements, reports, or information.”

6 “(j) Embezzlement, theft, misappropriation of funds or property, or obtaining
7 money, property, or other valuable consideration by fraudulent means or false pretenses.”

8 4. Code section 490 provides, in pertinent part, that the Board may suspend
9 or revoke a license when it finds that the licensee has been convicted of a crime substantially
10 related to the qualifications, functions or duties of a certified public accountant.

11 5. Code section 118(b) provides, in pertinent part, that the expiration of a
12 license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the
13 period within which the license may be renewed, restored, reissued or reinstated. Under
14 Business and Professions Code section 5070.6, the Board may renew an expired license at any
15 time within five years after its expiration.

16 6. Title 16, California Code of Regulations, section 99, provides, in pertinent
17 part, that a crime or act shall be considered to be substantially related to the qualifications,
18 functions or duties of a certified public accountant or public accountant if to a substantial degree
19 it evidences present or potential unfitness of a certified public accountant or public accountant to
20 perform the functions authorized by his certificate or permit in any manner consistent with the
21 public health, safety or welfare. Such crimes or acts shall include, but not be limited to those
22 involving the following:

23 “(a) Fiscal dishonesty or breach of fiduciary responsibility of any kind.”

24 “(c) Dishonesty, fraud or gross negligence in the practice of public accountancy or
25 in the performance of the bookkeeping operations described in section 5052 of the Code.”

26 7. Code section 5107 provides, in pertinent part, that the Executive Officer
27 may request the administrative law judge to direct any holder of a permit or certificate found

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1 guilty of unprofessional conduct in violation of section 5100 to pay all reasonable costs of the
2 investigation and enforcement of the case, including, but not limited to, attorney fees.

3 COUNT I

4 8. Respondent has subjected his license to discipline under Code section
5 5100(a) on the grounds of unprofessional conduct in that on or about January 26, 1998, he was
6 convicted upon his guilty plea to violating Penal Code section 487(a), felony, grand theft, in the
7 matter entitled *People of the State of California v. Hamilton Moody*, Municipal Court of
8 California, County of San Diego Judicial District, Case No. CD 132149.

9 The circumstances surrounding respondent's conviction are substantially related
10 to the qualifications, functions and duties of a certified public accountant because it evidences a
11 present and potential unfitness to perform the functions authorized by his certified public
12 accountant license in a manner consistent with the public health, safety or welfare.

13 The following facts establish the substantial relationship between respondent's
14 unprofessional conduct and the practice of a certified public accountant:

15 Respondent and his business, Perpetual Commodity Fund, Inc., were entrusted to
16 manage property for a group of investors. Respondent sold the property without the knowledge
17 of the partner/investors and converted approximately \$540,000.00 to his own personal use.
18 Respondent unlawfully used the proceeds from the sale of the investment property owned by the
19 partnership which consisted of several individuals and respondent.

20 The investment property was acquired in approximately 1966 and respondent was
21 given management responsibility for the property. In 1989, the partnership agreed to sell the
22 property in exchange for monthly interest-only payments with the balance due in 1994. In
23 approximately May of 1993, the buyer paid off the note.

24 At the completion of the pay off, respondent received escrow proceeds of
25 approximately \$545,511.20. Respondent did not inform the investment partners of the
26 completed sale or of his receipt of the proceeds. Instead, he falsified an extension for the original
27 note, with a higher interest rate, and initiated an interest-only stream of payment to the partners

28 ///

1 to avoid detection. When the stream of payments ended in 1995, respondent informed the other
2 investors that the buyer had defaulted and he would begin foreclosure proceedings.

3 **COUNT II**

4 9. Respondent has subjected his license to discipline under Code section 490
5 in that on February 9, 1998, he was convicted of a crime substantially related to the
6 qualifications, functions or duties of a certified public accountant or public accountant, as set
7 forth in paragraph 8.

8 **COUNT III**

9 **EMBEZZLEMENT: BUSINESS AND PROFESSIONS CODE**
10 **SECTION 5100(J)**

11 During the period June 26, 1991, through July 14, 1992, while trustee for the
12 Slaughter Family Trust, respondent made unexplained withdrawals from the Trust totaling
13 \$245,650.00. The checks were written directly to respondent, his firm "Moody and Bucher, An
14 Accountancy Corporation" and to an entity owned by respondent, "San Diego One Touch Sales."
15 Respondent caused the Slaughter Family Trust to fail to pay inheritance taxes. Respondent
16 violated Business and Professions Code section 5100(j) when he embezzled Trust funds as
17 outlined herein.

18 **COUNT IV**

19 **FISCAL DISHONESTY AND BREACH OF FIDUCIARY**
20 **RESPONSIBILITY: BUSINESS AND PROFESSIONS CODE**
21 **SECTION 5100(H)**

22 **A. Unauthorized Use of Trust Funds**

23 During the period June 26, 1991, through July 14, 1992, while sole trustee for the
24 Slaughter Family Trust, respondent made unauthorized withdrawals from the family Trust for his
25 own personal use. Trustee powers granted in the Trust Agreement did not include personal use
26 of Trust funds by a trustee. Respondent violated Business and Professions Code section 5100(h)
27 when he breached his fiduciary responsibilities engaged in fiscal dishonesty and withdrew Trust
28 monies and used them for his own personal use.

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1 B. Failure to Pay Estate Taxes.

2 In a letter to the Trust beneficiaries, dated June 25, 1991, respondent represented
3 that the estimated balance due for estate taxes was approximately \$280,000.00 and that amount
4 was held in reserve for that purpose. Respondent drafted a transmittal letter to the IRS (dated
5 September 19, 1991) for final payment of the tax balances due for the Slaughter estates, totaling
6 \$281,414.00. Respondent prepared two checks payable to the IRS, dated September 19, 1991, in
7 the amounts indicated in the transmittal letter. The letter and two checks were never mailed to
8 the IRS.

9 On May 9, 1997, the IRS issued a notice to respondent that the deceased mother's
10 estate was in default \$98,306.00 because yearly payments of tax and interest were not made in a
11 timely manner. On May 23, 1997, the IRS issued notice to respondent that the deceased father's
12 estate was in default \$76,526.00 because yearly payments of tax and interest were not paid in a
13 timely manner.

14 On September 30, 1997, an IRS tax lien was levied against property in which the
15 Slaughter Family Trust held an interest. The lien was for \$98,306.00 which represented the
16 unpaid taxes, interest, and penalties due for the deceased mother's estate. The family was
17 unaware of the lien until the property was sold.

18 Respondent's failure to pay estate taxes constituted unprofessional conduct, fiscal
19 dishonesty and breach of fiduciary responsibility pursuant to Business and Professions Code
20 section 5100(h).

21 COUNT V

22 **PREPARATION AND DISSEMINATION OF FALSE AND**
23 **MATERIALLY MISLEADING FINANCIAL**
24 **INFORMATION: BUSINESS AND PROFESSIONS CODE**
SECTION 5100(I)

25 In a June 25, 1991, letter, respondent informed the Slaughter family members of
26 an estimated \$280,000.00 being held in reserve for payment of the balance of estate taxes then
27 due and payable. However, on June 26, 1991, respondent made the first of several withdrawals

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1 over a one-year period. Each withdrawal was for respondent's own personal use of the Trust
2 funds.

3 Certain installment payments were made between January 1991 and July 1994.
4 Respondent did not pay the balance of the due taxes. Respondent's failures as outlined herein
5 constituted unprofessional conduct when he knowingly prepared false, fraudulent and materially
6 misleading financial statements, reports, information and correspondence to the Slaughter family
7 members. Respondent's actions constituted unprofessional conduct pursuant to Business and
8 Professions Code section 5100(i) and U.S. Treasury Department Circular No. 230, section 10.22
9 (diligence used in preparing, assisting, approving, and filing returns, documents, affidavits, and
10 other papers relating to Internal Revenue Service matters).


11 WHEREFORE, complainant prays that a hearing be held and that the Board make
12 its order:

13 1. Revoking, suspending, or otherwise imposing a discipline upon Certified
14 Public Accountant License Number 1890 to Hamilton Moody;

15 2. Ordering Hamilton Moody to pay to the Board all reasonable costs of the
16 investigation and enforcement of the case, including, but not limited to, attorneys fees, pursuant
17 to Business and Professions Code section 5107; and

18 3. Taking such other and further action as the Board deems necessary and
19 proper.

20 DATED: September 23, 1998

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23 
24 CAROL SIGMANN, Executive Officer
25 Board of Accountancy
26 Department of Consumer Affairs
27 State of California

28 Complainant